

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION
2:06CR4**

UNITED STATES OF AMERICA,)	THIRD
)	SCREENING
Vs.)	ORDER
)	
TERENCE HOWARD ROACH.)	
_____)	

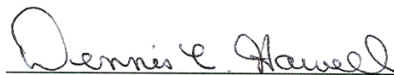
THIS MATTER is before the court upon defendant's Revised Motion to Suppress (#23) and the government's Response (#25). In that response, the government requests that the evidentiary hearing be cancelled inasmuch as the affidavit submitted in support of the Criminal Complaint in 2:06mj5 shows, objectively, that Special Agent Lando had probable cause to effectuate the arrest of defendant even if he did not intend to arrest defendant prior to the interview. Response, at 2. While it might be logical to assume that the affidavit was written as a chronology, review of the affidavit, however, does not indicate on what dates Special Agent Lando discovered such facts or, for that matter, which day he interviewed defendant. Such a time line is necessary for the undersigned to conduct a proper review of defendant's motion. In addition, defendant has raised as a sub-contention the issue of allegedly not taking him before a judicial officer in a timely fashion. Such an issue requires a determination of the precise time defendant was purportedly taken into custody, the precise warnings he was provided, and the precise time he allegedly confessed. See 18 U.S.C. § 3501(b) & (c). While not controlling and not identical to the facts and situation in this case, the undersigned has found United States v. Baxter, 1986 WL 15583 (D.Neb. 1986) helpful

inasmuch as it dealt with an unintended arrest and confession in Indian country and a method for analysis under both the fifth and fourth amendments. The government's request to cancel the hearing will be denied.

ORDER

IT IS, THEREFORE, ORDERED that the government's request to cancel the evidentiary hearing is **DENIED**.

Signed: March 21, 2006

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Dennis L. Howell
United States Magistrate Judge

